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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 606

KATHLEEN K. WILKIN,
Petitioner,

vs.

SUNBEAM CORPORATION,
Respondent.

REPLY BRIEF OF PETITIONER

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and

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and

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ARGUMENT

This brief reply is made to aid the court in consideration of the petition.

I. Respondent's "QUESTION PRESENTED", Pages 2 and 3.

It is asserted, ". . . Respondent developed and marketed through its own people, who never saw or heard of the Wilkin device or patent application, a somewhat similar device (Sunbeam Party Grill), . . .".

Mr. Rose, the full time patent attorney employee of Respondent, skilled in the art, was always one of Respondent's "own people" developing and marketing the Sunbeam Party Grill, just like the other people of Re-

spondent involved. His function for Respondent of product clearance from the standpoint of infringing anyone else's patents was as necessary as any function performed by other "people" of Respondent. He was charged by Respondent with the duty to, and received the submission from the Petitioner in 1957. When in the Summer of 1958 Respondent concerned itself with developing the Sunbeam Party Grill, Mr. Rose recalled from whom Respondent first received a "somewhat similar device", namely the Wilkin device. Mr. Rose cannot be divorced from the proceedings. Respondent Sunbeam is responsible for his actions. (R. 218-222) (R. 259-260)

II. Respondent's Heading "II",

Pages 13-17.

On page 15 it is asserted, "Respondent spent from December, 1958, until August, 1961, in developing its Party Grill."

Petitioner's exhibit 39 (R. 414) is internal correspondence of the Respondent Sunbeam. It is dated September 25, 1958. Written thereon is "EX 1617". This is the experimental number assigned by Respondent to the Sunbeam Party Grill. Petitioner and Respondent stipulated that Respondent wrote "EX 1617" on exhibit 39 after December, 1958. (R. 98) When it was written thereon is immaterial. It is important that the development carried on in the Summer of 1958 concerned the Sunbeam Party Grill, and it commenced prior to the surreptitious activity of Respondent through Messrs. Rose and Cumming in September and October, 1958. (R. 399-405) The testimony of Respondent's vice president Mr. Mendler relative exhibit 39 carries the commencement time back to August, 1958. (R. 213) The following is quoted from the "BRIEF

OF APPELLEE" (Respondent) to the Court of Appeals, page 21:

> ". . . A colored sketch (Physical Exhibit RRR) was made by Mr. Ernest, which sketch, although made in the fall of 1958 and before any of Sunbeam's extensive research and development work on its Sunbeam Party Grill, looked remarkably like the final design of the Sunbeam Party Grill (Physical Exhibit FFFF) as marketed in 1961. . . ."

The Respondent had the Sunbeam Party Grill, which it characterizes as "a somewhat similar device" to the Wilkin device in the Fall of 1958 at the same time that Respondent was carrying on through Messrs. Rose and Cumming the surreptitious activity against the Petitioner. Actually, Respondent had the Sunbeam Party Grill designed by November, 1958, since "Exhibit RRR" was finished on "12-5-58". (R. 330) It is no wonder that Mr. Rose was concerned about patent clearance in regard to the Petitioner's pending patent application.

Respectfully submitted,

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